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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

TAYLOR B. MATTOS-YANEZ,

Plaintiff and Appellant,

v.

GERALD DOVER, et al.,

Defendants and Respondents.

F073294

(Super. Ct. No. CVM017928)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. Donald J. Proietti, Judge.

Miles, Sears & Eanni, Richard C. Watters and Lyndsie N. Russell, for Plaintiff and Appellant.

Law Office of Paul Auchard and Paul Auchard for Defendants and Respondents.

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Taylor B. Mattos-Yanez was a guest on a houseboat owned by Gerald and Darlene Dover (the Dovers) when another guest, Christopher Gonzales, who wanted her to jump with him into the water from the houseboat's second level, grabbed her and jumped with her through an open gate. Instead of landing in the water, Mattos-Yanez landed face-down on the houseboat's deck. She sued the Dovers for negligence, alleging they were

responsible for her injuries because they furnished her with alcoholic beverages, both on the way to the houseboat and while she was there, although they knew she was under 21. The Dovers filed a summary judgment motion, in which they asserted that Mattos-Yanez could not prove either duty or causation. The trial court granted the motion on causation, as there was no evidence to support a reasonable inference that furnishing alcoholic beverages to Mattos-Yanez was the proximate cause of her injuries.

Mattos-Yanez appeals, contending a triable issue of material fact exists as to causation. We agree with the trial court that no such triable issue of material fact exists. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mattos-Yanez was the Dovers' friend and former nanny. The Dovers, along with other individuals, co-owned a two-level houseboat moored at Lake McClure. The houseboat's second level had a railing around its edge with a gate in it that could be opened to allow people to dive or jump into the water.

On June 1, 2013, then 18-year-old Mattos-Yanez and several other individuals were guests on the houseboat. Although the Dovers deny this, Mattos-Yanez asserts that while driving to the houseboat that day, the Dovers stopped at a market and, after asking if she wanted alcohol, purchased her a 24-ounce can of strawberry margarita, which she drank on the way to the houseboat. Mattos-Yanez also claims sometime later that day, the Dovers were mixing drinks on the houseboat and she consumed two rum and Cokes that were served in a red plastic cup. Mattos-Yanez could not recall who gave her the drinks or when she was provided them. She believed she consumed them sometime between noon and 6 p.m., when the accident happened; her last drink could have been anywhere from 10 minutes to two hours before the accident.

Around 6 p.m. that day, a group of people, including Gerald Dover, Mattos-Yanez, and Gonzales, were socializing on the houseboat's second level. According to Mattos-Yanez, she and Gonzales were standing next to the railing at the open gate when

Gonzales said to her, “Let’s jump in.” Mattos-Yanez, who did not like jumping from heights, said “No” and held onto the railing with both hands, trying not to go over the side. Gonzales put his arms around her and pulled her off the second level through the open gate, which was a step away. Mattos-Yanez lost her grip on the railing and they both fell.¹ According to Gonzales, by grabbing the railing, Mattos-Yanez stopped their momentum and caused them to “fall short”; instead of hitting the water, Mattos-Yanez landed face-down on a small walkway on the houseboat. Gonzales believed that had she not grabbed the railing, they would have gone out far enough from the houseboat’s edge and into the water. Mattos-Yanez broke her arm and nose, injured her right knee, and sustained numerous scratches and bruises.

An ambulance was dispatched to the scene. Amy Clubb, the paramedic who helped treat and transport Mattos-Yanez to the hospital, noted that Mattos-Yanez admitted she was intoxicated. Clubb could smell alcohol on Mattos-Yanez’s breath as she spoke; “the smell of alcohol was very, very intense.” Due to the mechanism of injury, as well as her intoxication, Mattos-Yanez was placed in a C-spine. Although Mattos-Yanez was able to follow all commands, she tried to take the C-spine equipment off, and was screaming and yelling while being transported. Gonzales, who rode in the ambulance with Mattos-Yanez, told the paramedics that this was “normal behavior.” Clubb, however, took this behavior as a sign of intoxication. Mattos-Yanez was not given pain medication while on the way to the hospital “due to intoxication.” It appeared to the ambulance driver, Jacob Figueroa, that Mattos-Yanez was intoxicated, as she

¹ Gonzales’s recollection of the accident differed from Mattos-Yanez’s – he thought they agreed to jump off together, he then put his arms around her waist and she grabbed the rail as they were both jumping off. He claimed he did not have any indication that Mattos-Yanez was going to grab the rail before they jumped. Gerald Dover stated in his declaration that he recalled looking over and “seeing a very fast movement.” While he was “not entirely clear on this,” it appeared to him that Gonzales picked Mattos-Yanez up, ran with her towards the opening in the railing, and jumped off the side of the houseboat at the gate.

smelled of alcohol and was combative, although he admitted that behavior could also be attributed to a head injury. The emergency room doctor testified it was his impression that Mattos-Yanez was not significantly intoxicated, as she was alert and oriented.

When Mattos-Yanez was asked at her deposition, “Did you feel you were intoxicated when the accident happened?[,]” Mattos-Yanez answered “No.” Gonzales thought Mattos-Yanez was intoxicated when she jumped off the houseboat because he saw her with a drink in her hand just before. He did not remember if he saw any other signs of intoxication.² Gerald Dover testified that he suspected Taylor had been drinking alcohol before she fell and that he “smelled alcohol” after the accident.

Mattos-Yanez filed a complaint alleging the Dovers were negligent in providing alcohol to a minor, as well as failing to supervise horseplay on their houseboat, and as a result, she sustained injuries when Gonzales pulled her off the houseboat’s second level.³ Mattos-Yanez later filed an amended complaint, which added an allegation that the houseboat was the Dovers’ residence and the Dovers knowingly furnished alcoholic beverages to a minor at such residence.

The Dovers filed a motion for summary judgment or, in the alternative, summary adjudication, in which they asserted there was no actionable negligence under any theory. Specifically, they argued: (1) they had no duty to protect Mattos-Yanez from Gonzales’s negligence; (2) they could not be held liable for providing alcohol to Mattos-Yanez under the social host immunity of Civil Code section 1714, and the statute’s exception to immunity did not apply because the houseboat was not a residence; and (3) even if the houseboat was their residence, Mattos-Yanez could not show her consumption of alcohol

² At his deposition almost two years later, Gonzales testified he did not remember seeing any signs that Mattos-Yanez was under the influence of alcohol before they jumped off the houseboat.

³ Mattos-Yanez also named Gonzales as a defendant, but she dismissed him from the case before she submitted her opposition to the Dovers’ summary judgment motion.

was a proximate cause of the accident since she admitted she was not intoxicated at the time. The Dovers conceded they knew Mattos-Yanez was under 21 years of age and acknowledged there was a triable issue of fact regarding whether they furnished alcohol to her.

In her opposition to the motion, Mattos-Yanez argued: (1) the Dovers owed her a duty of care under Civil Code section 1714, subdivision (d), as a houseboat is a residence for purposes of the statute; (2) the Dovers were negligent per se under a Mariposa County ordinance that imposes criminal liability when a person who owns or control private property knowingly allows a minor to consume alcohol during a party on the property; and (3) there was a triable issue of fact as to whether her injuries were caused by the Dovers' breach of duty, as there was conflicting evidence regarding her intoxication. Mattos-Yanez asked the trial court to take judicial notice of a Bill Analysis of Assembly Bill Number 2486, as amended June 29, 2010, entitled "Concurrence in Senate Amendments."

In reply, the Dovers argued the Mariposa County ordinance is preempted to the extent it conflicts with Civil Code section 1714, there was no competent evidence that Mattos-Yanez was intoxicated at the time of the accident, and there was no evidence intoxication played a part in the accident, as there was no evidence from which it could be inferred that Mattos-Yanez's alcohol consumption caused her to grab the rail, which changed the trajectory of the jump and caused her to land on the houseboat instead of in the water.

The trial court issued a tentative decision to grant the motion primarily because it was unable to find a causal connection between an alleged violation of the social host liability law and the negligence claim. At oral argument, Mattos-Yanez's attorney asserted there was a triable issue of fact on causation because a jury reasonably could conclude: (1) Mattos-Yanez grabbed the rail, which caused her to land on the houseboat rather than in the water, because she exercised poor judgment due to being intoxicated

and, had she been sober, she might have realized it was more dangerous to resist and safer to make a clean jump into the water; and (2) Mattos-Yanez was engaging in horseplay with Gonzales because she was intoxicated and, had she been sober, she would not have allowed Gonzales to wrap his arms around her and let events escalate as they did. The trial court responded that it was having a difficult time understanding how furnishing alcohol caused Mattos-Yanez's ultimate injury and admitted it had not considered these two theories of causation. After further argument concerning whether the houseboat was a residence, the trial court took the motion under submission.

The trial court subsequently issued a written ruling granting summary judgment in the Dovers' favor. The trial court granted Mattos-Yanez's request for judicial notice and ruled on the Dover's objections to Mattos-Yanez's evidence. The trial court found the Dovers were entitled to judgment as a matter of law because there was no evidence to support a reasonable inference that furnishing alcoholic beverages to Mattos-Yanez "was a proximate cause of her injuries sustained when she fell from the second level of [the Dovers'] houseboat and landed on the lower level." The trial court explained the evidence showed that Mattos-Yanez did not want to jump off the houseboat and Gonzales pulled her from the railing, causing her to fall and land on the lower level rather than in the water, but there was no evidence presented that any conduct by the Dovers caused her injuries.

The trial court addressed the two potential triable theories of causation Mattos-Yanez's counsel identified at oral argument, i.e. that, if Mattos-Yanez were not intoxicated, she would not have reached for the railing and would not have engaged in horseplay, and determined there was no evidence to support either theory. With respect to the first theory, the trial court found there was no evidence that Mattos-Yanez grabbed the railing while falling; instead, she consistently stated during her deposition she was holding onto the railing with both hands, resisting Gonzales pulling her in, and it was his

pulling that forced her to let go. On the second theory, the trial court found there was no evidence Mattos-Yanez was engaging in horseplay because she was intoxicated.

The trial court stated that while Mattos-Yanez demonstrated that other triable issues existed, such as whether she was intoxicated at the time of the accident, she had not demonstrated a triable issue of material fact as to proximate causation, which was dispositive. In so ruling, the trial court assumed, without deciding, that social host liability under Civil Code section 1714, subdivision (d)(1) encompasses an adult furnishing alcoholic beverages to a minor at the adult's secondary residence.

DISCUSSION

Standard of Review

A defendant “may move for summary judgment . . . if it is contended that the action has no merit.” (Code Civ. Proc., § 437c, subd. (a)(1).)⁴ The defendant bears the burden of showing that a cause of action has no merit because either (1) the plaintiff cannot establish an element of the claim or (2) the defendant has a complete defense. If the defendant makes this showing, the burden shifts to the plaintiff opposing the summary judgment motion to establish that a triable issue of fact exists as to these issues. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768 (*Saelzler*); § 437c, subds. (a), (p)(2).)

As the moving party, the Dovers “bear[] an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) If they meet this burden, then the burden of production shifts to Mattos-Yanez “to make a prima facie showing of the existence of a triable issue of material fact.” (*Ibid.*) “[F]rom commencement to conclusion, the party moving for summary judgment bears the burden

⁴ Subsequent statutory references are to the Code of Civil Procedure unless otherwise stated.

of persuasion that there is no triable issue of material fact and that he [or she] is entitled to judgment as a matter of law.” (*Ibid.*)

Significant to the case presently before us is the principle that on summary judgment “the court may not weigh the plaintiff’s evidence or inferences against the defendants as though it were sitting as the trier of fact.” (*Aguilar, supra*, 25 Cal.4th at p. 856.) The court may, and in fact “must . . . determine what any evidence or inference could show or imply to a reasonable trier of fact.” (*Ibid.*, italics omitted.) To state this a bit differently, the court does not determine whether an opposing plaintiff’s evidence is credible, but rather determines what inference a reasonable trier of fact could draw from that evidence if the trier of fact were to believe that evidence. (See *Colarossi v. Coty U.S. Inc.* (2002) 97 Cal.App.4th 1142, 1153–1155 (*Colarossi*).)

We review an order granting summary judgment de novo. (*Aguilar, supra*, 25 Cal.4th at p. 860.) We independently review the record and apply the same rules and standards as the trial court. (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.) The trial court must grant the motion if “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (§ 437c, subd. (c).) In ruling on a summary judgment motion, the court must “consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court.” (*Ibid.*; *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1039.) “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar, supra*, 25 Cal.4th at p. 850.) We view the facts in the light most favorable to the nonmoving party and assume that, for purposes of our analysis, her version of all disputed facts is correct. (*Sheffield v. Los Angeles County Dept. of Social Services* (2003) 109 Cal.App.4th 153, 159 (*Sheffield*).)

Here, the trial court determined the Dovers were entitled to judgment as a matter of law because Mattos-Yanez cannot establish an essential element of her negligence claim, namely proximate cause. On appeal, Mattos-Yanez contends the trial court erred, as she established a triable issue of fact on causation and the trial court failed to consider whether there was liability under the Mariposa County ordinance.⁵

Causation

As we have noted, Mattos-Yanez sued the Dovers for negligence. To prevail in an action for negligence, a plaintiff must plead and prove the following essential elements: (1) defendant's legal duty of care; (2) defendant's breach of duty (i.e., the negligent act or omission); (3) the breach was a proximate or legal cause of her injury (i.e., causation); and (4) damages. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673; 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 576, p. 701.)

Mattos-Yanez alleged the Dovers were negligent because they knowingly furnished alcoholic beverages to her at their residence, i.e. the houseboat, and, as a result, she was injured when Gonzales pulled her off the houseboat's second level and she landed on the first level's deck. The Legislature has declared a broad rule of immunity from civil liability for individuals who furnish alcoholic beverages to persons who go on

⁵ On June 20, 2016, Mattos-Yanez filed a request for judicial notice of the following documents: (1) 2014 Recreational Boating Statistics published by the United States Coast Guard (Exhibit A); (2) Mariposa County Code Chapter 9.13 (Exhibit B); and (3) Assembly Floor Analysis for Assembly Bill No. 2486, dated July 29, 2010 (Exhibit C). We deny the request as to Exhibit A, the boating statistics, as the document was not before the trial court when it decided the summary judgment motion. (*Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1201-1202.) We grant the request as to the other two documents, both of which were before the trial court. (Evid. Code, §§ 452, subds. (b) & (c), 459; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31, 39 [judicial notice of Assembly committee analyses]; *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 24 [taking judicial notice of county ordinance].)

to injure themselves as a result of their intoxication.⁶ The Legislature, however, also has declared an exception to that immunity which allows for “a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, . . . the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.” (Civ. Code, § 1714, subd. (d)(1).)

In the Dovers’ summary judgment motion, they sought to negate or disprove the elements of duty and causation. For purposes of this appeal, however, the causation issue is sufficient to fully dispose of all issues raised; therefore, it is unnecessary to consider the other grounds asserted in the Dovers’ motion. Where a defendant’s summary judgment motion is sufficient to show the plaintiff cannot establish the element of causation, and the plaintiff’s opposition fails to produce admissible evidence showing the existence of a triable issue of fact, summary judgment is appropriate. (*Saelzler, supra*, 25 Cal.4th at pp. 768-769.) As more fully explained below, that is precisely what happened in the present case.

There are two aspects to proximate causation: “ ‘whether the defendant’s conduct was the “cause in fact” of the injury; and, if so, whether as a matter of social policy the defendant should be held legally responsible for the injury.’ ” (*Kumaraperu v. Feldsted* (2015) 237 Cal.App.4th 60, 68 (*Kumaraperu*)). The first aspect is determinative here.

“Cause in fact” asks whether the defendant’s conduct was the “ ‘necessary antecedent’ ” to the injury, without which no injury would have occurred. (*Maupin v. Widling* (1987) 192 Cal.App.3d 568, 573.) That is, the defendant’s conduct must be a

⁶ Civil Code section 1714 provides that everyone is responsible for their own willful or negligent conduct, and “no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person resulting from the consumption of those beverages.” (Civ. Code, § 1714, subds. (a), (c).)

“ ‘substantial factor’ ” in bringing about the harm. (*Kumaraperu, supra*, 237 Cal.App.4th at p. 68 [explaining that, to determine “causation in fact, California has adopted the substantial factor test set forth in the Restatement Second of Torts, section 431”].) “An event will be considered a substantial factor in bringing about harm if it is ‘recognizable as having an appreciable effect in bringing it about.’ ” (*Kumaraperu, supra*, 237 Cal.App.4th at p. 68.) A substantial factor is something that is more than “ ‘a slight, trivial, negligible, or theoretical factor in producing a particular result.’ ” (*Espinosa v. Little Co. of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1314.) A defendant whose conduct was a substantial factor in causing the plaintiff’s harm “cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing the plaintiff’s harm; but [the defendant’s] conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.” (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.)

“Though proximate cause is generally considered a question of fact for determination by a jury, ‘ “where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of law, not of fact.” ’ ” (*Pipitone v. Williams* (2016) 244 Cal.App.4th 1437, 1459, quoting *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 353 (*State Dept.*).) “ ‘A mere possibility of . . . causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.’ ” (*Saelzler, supra*, 25 Cal.4th at pp. 775-776, italics omitted.)

Here, even if the Dovers knowingly furnished alcohol to Mattos-Yanez and their houseboat was their residence, to establish negligence Mattos-Yanez must prove that the furnishing of alcohol proximately caused her injuries. The evidence, however, does not support a reasonable inference of proximate cause. According to Mattos-Yanez, she and Gonzales were standing next to the railing at the open gate when Gonzales said “Let’s jump in[,]” and, because she did not like jumping from heights, she responded “No” and

grabbed onto the railing with both hands. At that point, Gonzales put his arms around her and pulled her through the open gate, which caused her to lose her grip on the railing and resulted in her landing on the walkway below rather than in the water. Mattos-Yanez's testimony does not establish that her consumption of alcohol was a substantial factor in causing the accident, as there is nothing to suggest that she acted unreasonably. Put another way, the same harm would have occurred even had she not been drinking.

Mattos-Yanez asserts the jury reasonably could infer her injuries were the proximate result of the Dovers providing alcohol to her.⁷ She reasons that a jury could find that her intoxication affected her judgment and decision-making skills, which in turn caused her to either (1) engage in horseplay she would not have engaged in had she been sober, which led to Gonzales picking her up and jumping over the side, or (2) grab the rail, which she might not have done had she been sober, as she could have realized it was more dangerous to resist Gonzales than to let him pull her into the water. There is no evidence, however, to support either theory or upon which the trier of fact could reasonably infer causation.

First, there is no evidence that *she* was engaging in horseplay with Gonzales before he picked her up and jumped through the open gate. By Mattos-Yanez's account, the two were standing together by the open gate when he suggested they jump and, when she said no and grabbed the railing, he picked her up and jumped. Even if she were intoxicated, her behavior did not cause Gonzales to act as he did. With respect to the second theory, Mattos-Yanez admitted she grabbed the railing *before* Gonzales picked her up because she did not like jumping from heights. She did not testify she grabbed the

⁷ Mattos-Yanez contends the trial court erred because it did not apply the substantial factor standard and it improperly weighed the evidence. We need not address these contentions, however, since we review the trial court's result, not its reasoning. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1325; *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 535.)

railing because her intoxication impaired her judgment. To the contrary, she testified she did not *feel* intoxicated. Thus, even if Mattos-Yanez were intoxicated, based on her own testimony, it played no role in her decision to grab the railing.

There is simply no evidence that Mattos-Yanez's consumption of alcohol was a factor, let alone a substantial factor, in causing her injury. As such, this is one of those rare cases where the only reasonable conclusion to be drawn from the facts is an absence of causation.

Mattos-Yanez contends that it was foreseeable that an under-aged person drinking alcohol on a boat would engage in horseplay after drinking and injure herself, as such a person exhibits poor judgment while under the influence of alcohol. In support, she cites cases which discuss foreseeability in the context of proximate cause, namely *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, 1159-1160, and three out-of-state cases, *Kiriakos v. Phillips* (Md. Ct.App. 2016) 139 A.3d 1006; *Harris v. Traini* (Ind. Ct.App. 2001) 759 N.E.2d 215, and *St. Hill v. Tabor* (La. 1989) 542 So.2d 499.

Foreseeability, however, is relevant to the second aspect of proximate cause, which focuses on public policy considerations that may limit an actor's liability for the consequences of his or her conduct. (See *State Dept.*, *supra*, 61 Cal.4th at p. 353; 6 Witkin, Summary of Cal. Law (10th ed. 2005) Torts § 1186, p. 553 [even if a defendant's conduct is the cause in fact of the injury, proximate, or legal, cause relieves the defendant of liability when it would be considered unjust to hold him or her legally responsible, such as where there is an independent intervening act that is not reasonably foreseeable].) "Like duty, proximate cause reflects a judgment regarding the permissible extent of liability for negligence. [Citation.] It limits the defendant's liability to those foreseeable consequences that the defendant's negligence was a substantial factor in producing." (*Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1342.)

Since we conclude only one inference may be drawn from the undisputed facts, we do not evaluate the public policy element of proximate cause. Even if it is foreseeable

that intoxicated under-aged persons will exercise poor judgment and engage in horseplay, here there is no evidence from which it reasonably can be inferred that Mattos-Yanez's alcohol consumption caused *her* to exercise poor judgment or engage in horseplay. In other words, even if the Dovers furnished alcohol to Mattos-Yanez, their act was not a substantial factor in bringing about her injuries.

Mattos-Yanez also contends she presented another theory of liability based on a violation of Chapter 9.13 of the Mariposa County Code, entitled "Social Host Accountability[,]"⁸ which the trial court failed to consider in ruling on the summary judgment motion. She asserts there is a triable issue of fact regarding whether the violation of this ordinance, which makes it a misdemeanor for a person who owns private property to knowingly allow a party to take place on that property if a minor at the party obtains, possesses or consumes any alcoholic beverage and the person knows, or reasonably should know, of such possession or consumption, was a substantial factor in causing her injuries. In response, the Dovers assert the ordinance is preempted by Civil Code section 1714, subdivision (b).

⁸ Mariposa County Code section 9.13.012 entitled "Prohibition" provides:

"A. No person who owns or controls private property shall knowingly allow a party to take place or continue on such private property if a minor at the party obtains, possesses, or consumes any alcoholic beverage and the person knows or reasonably should know, by taking all reasonable steps to prevent alcoholic beverage consumption by the minor as described in subdivision B of this section, that the minor has obtained, possesses, or is consuming alcoholic beverages at the party.

"B. It is the duty of any person having control of any private property, who knowingly hosts, permits or allows a gathering on the property to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps include, but are not limited to, controlling access to alcoholic beverages, controlling the quantity of alcoholic beverages, verifying the age of persons at the gathering by inspecting driver's licenses or other government issued identification cards, and supervising the activities of minors at the gathering. (Ord.1042 Sec.I, 2007)."

Mattos-Yanez asserts the Dovers were negligent per se because they breached the statutory duty set forth in the ordinance, namely knowingly allowing her to obtain, possess and consume alcohol. While negligence may be presumed if a defendant violates a statute, the violation must be the proximate cause of the injury. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 463 (*Reyes*).)⁹ Since we have concluded that Mattos-Yanez cannot establish the furnishing alcohol to her played a substantial factor in causing her injuries, she cannot prevail on her negligence per se theory. Accordingly, we do not decide the preemption issue.

Finally, Mattos-Yanez asks us to decide whether the houseboat is a “residence” under Civil Code section 1714, subdivision (d). It is unnecessary to do so, however, because, even if the houseboat is a residence, the Dovers are entitled to judgment since Mattos-Yanez cannot establish an essential element of her claim, namely causation.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the Dovers.

GOMES, J.

WE CONCUR:

HILL, P.J.

SMITH, J.

⁹ “Negligence may be presumed if (1) the defendant violated a statute; (2) the violation proximately caused injury to the plaintiff; (3) the injury resulted from an occurrence which the statute was designed to prevent; and (4) the plaintiff was one of the class of persons for whose protection the statute was adopted.” (*Reyes, supra*, 65 Cal.App.4th at pp. 462-463.)